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REACH MEDIA GROUP, LLC
10

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 DAVID TRINDADE, individually and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 REACH MEDIA GROUP, LLC, a
Delaware limited liability company,
19

Defendant.

20 REACH MEDIA GROUP, LLC, a
21 Delaware limited liability company,

22 Third-Party Plaintiff,

23 v.

24 RYAN LENAHAN, individually, KYLE
DANNA, individually, and EAGLE WEB
25 ASSETS INC., a corporation,

26 Third-Party Defendants.
27

CASE NO 5:12-CV-04759 (PSG)

(Complaint Filed: September 12, 2012)

CLASS ACTION

**UNOPPOSED MOTION AND
[PROPOSED] ORDER TO EXTEND TIME
FOR SERVICE OF THIRD-PARTY
COMPLAINT ON THIRD-PARTY
DEFENDANT EAGLE WEB ASSETS INC.**

[Fed. R. Civ. Proc. 6(b)(1)(A)]

Judge: Honorable Paul Singh Grewal

Department: Courtroom 5

Complaint Filed: Sept. 12, 2012

Third-Party Complaint Filed: Nov. 15, 2012

1 Defendant and Third-Party Plaintiff Reach Media Group, LLC (“RMG”), by and through
 2 its undersigned attorneys, respectfully requests that this Court extend the 30-day deadline set in
 3 its January 8, 2013 Civil Minute Order for service of the Third-Party Complaint in this matter on
 4 Third-Party Defendant Eagle Web Assets Inc. (“EWA”), to 14 days following the date this Court
 5 issues its order on Third-Party Defendants Ryan Lenahan’s (“Lenahan”) and Kyle Danna’s
 6 (“Danna”) Motion to Strike And/Or Dismiss Third-Party Complaint. Plaintiff David Trindade
 7 (“Plaintiff”), Lenahan, and Danna, do not oppose and have stipulated, along with RMG, to this
 8 extension (collectively, the “Parties”). (See Declaration of Vishali Singal, Esq., In Support of
 9 Reach Media Group, LLC’s Unopposed Motion to Extend Time for Service of Third-Party
 10 Complaint on Third-Party Defendant Eagle Web Assets Inc. (“Singal Decl.”), ¶ 2, Ex. A.)

11 **I. Relevant Statement of Facts**

12 RMG filed a Third-Party Complaint in this matter on November 15, 2012 against Third-
 13 Party Defendants Lenahan, Danna, and EWA. (Dkt. #22.) The Third-Party Complaint states five
 14 counts: (1) Breach of Warranty Against All Third-Party Defendants; (2) Breach of Contract
 15 Against All Third-Party Defendants; (3) Libel Per Se Against Third-Party Defendants Lenahan
 16 and EWA; (4) Tortious Interference With Contractual Relations Against Third-Party Defendant
 17 Lenahan; and (5) Tortious Interference With Prospective Economic Advantage Against Third-
 18 Party Defendant Lenahan. RMG completed timely service of process on Lenahan and Danna but
 19 encountered difficulty serving EWA with the Third-Party Complaint. (See Singal Decl., ¶ 4.)

20 During the Initial Case Management Conference in this matter on January 8, 2013,
 21 counsel appearing on behalf of RMG, Vishali Singal, Esq., informed this Court that as of January
 22 8, 2013, RMG had encountered difficulty serving EWA with the Third-Party Complaint. (Singal
 23 Decl., ¶ 5.) Ms. Singal further informed this Court that RMG likely required an additional month
 24 to effectuate service on EWA of the Third-Party Complaint. (Singal Decl., ¶ 5.)

25 Subsequently, during the Initial Case Management Conference, this Court set a 30-day
 26 deadline for RMG to serve EWA with the Third-Party Complaint, reflected in the Civil Minute
 27 Order of the same date. (Dkt. #37.) That deadline corresponds with the date February 7, 2013.

28 On or about January 10, 2013, Ms. Singal instructed Keith Nesbit, legal assistant at DLA

1 Piper LLP (US), to research addresses to serve process on EWA's Vice President of Accounting
 2 or Vice President of Human Resources and once identified, to authorize a process server to
 3 attempt service at the identified address(es). (See Singal Decl., ¶ 6.) Ms. Singal learned on or
 4 about January 10, 2013 that Mr. Nesbit located an address online that appeared to be associated
 5 with Savy Lam, identified on EWA's website on January 10, 2013 as Vice President of
 6 Accounting. (See Singal Decl., ¶ 6.) As a result, Ms. Singal instructed Mr. Nesbit to authorize a
 7 process server to attempt service of the Third-Party Complaint at that address. (See Singal Decl.,
 8 ¶ 6.)

9 One day later, on Friday, January 11, 2013, RMG was electronically served through this
 10 Court's Electronic Case Filing system with Lenahan's and Danna's Third-Party Defendants'
 11 Notice of Motion and Motion to Strike And/Or Dismiss Third-Party Complaint and Memorandum
 12 of Points and Authorities In Support Thereof ("Motion"). (Dkt. #38.) The Notice of Motion to
 13 Strike And/Or Dismiss Third-Party Complaint ("Notice of Motion") specified a hearing date of
 14 February 26, 2013. (Dkt. #38.) The Motion argues, among other things, that RMG has not stated
 15 a proper third-party claim as to Lenahan and Danna and that RMG has failed to state claims for
 16 Breach of Warranty and Breach of Contract. (See Motion, pp. 6-7.)

17 The following Wednesday, on or about January 16, 2013, Ms. Singal learned that the
 18 process server had unsuccessfully attempted service of the Third-Party Complaint on January 14,
 19 2013 at the address associated with Ms. Lam. (See Singal Decl., ¶ 8.) In the meantime, RMG's
 20 counsel had reviewed the Motion, and in light of its content, shifted its focus to preparing an
 21 opposition brief to the Motion and considering the implications of the Motion on allegations and
 22 counts stated in the Third-Party Complaint as to EWA. (See Singal Decl., ¶ 8.) On or about
 23 January 22, 2013, Ms. Singal instructed Mr. Nesbit to obtain a background report for Mr. Eagle,
 24 to identify additional addresses at which to attempt service of the Third-Party Complaint on
 25 EWA, and on or about January 24, 2013, Ms. Singal received that background report.

26 On January 25, 2013, this Court reset the February 26, 2013 hearing on the Motion to
 27 March 12, 2013. (Dkt. #45.)

28 On February 5, 2013, the Parties agreed to stipulate to RMG's requested extension to

1 serve EWA with the Third-Party Complaint or an amended Third-Party Complaint to 14 days
 2 from the date this Court issues its order on the Motion, or such other date and time thereafter as
 3 the Court shall order. (See Singal Decl., ¶ 2, Ex. A.)

4 **II. Argument**

5 Under FRCP 6, where an act “may or must be done within a specified time, the court may,
 6 for good cause, extend the time [] with or without motion or notice if the court acts, or if a request
 7 is made, before the original time or its extension expires.” FRCP 6(b)(1)(A). Here, RMG
 8 respectfully submits its unopposed request for an extension of time to serve EWA with the Third-
 9 Party Complaint or an amended Third-Party Complaint, before the deadline set by this Court of
 10 February 7, 2013 and before the end of the 120-day statutory period under FRCP 4(m), March 15,
 11 2013, for RMG to serve the Third-Party Complaint on EWA.

12 RMG’s request is grounded on the argument that because the Motion challenges claims
 13 brought against Lenahan and Danna that are also brought against EWA in the Third-Party
 14 Complaint, this Court’s decision on that Motion will impact RMG’s decision on how to proceed
 15 against EWA, both in terms of the decision to proceed and the content of the Third-Party
 16 Complaint as it relates to EWA. (See Singal Decl., ¶ 11.) Specifically, the Motion challenges the
 17 Third-Party Complaint as to Lenahan and Danna on the grounds that it does not state a proper
 18 third-party claim because the asserted claims are “not dependent on the outcome of Plaintiff’s
 19 claim” (Motion, p. 6, ll. 2-4) and that it fails to state claims for Breach of Warranty and Breach of
 20 Contract (Motion, p. 8, ll. 18-24), among other arguments. Allegations made in the Third-Party
 21 Complaint regarding the legal basis for the Third-Party Complaint, and Counts I and II, for
 22 Breach of Warranty and Breach of Contract, respectively, are asserted as to all three Third-Party
 23 Defendants. (Dkt. #22, ¶¶ 15, 34-40.) Accordingly, the Court’s decision on these aspects of the
 24 Motion will necessarily impact the viability of the Third-Party Complaint in its current form as to
 25 EWA. (Singal Decl., ¶ 11.)

26 In an effort to prevent duplicative motion practice and associated expenditures of judicial
 27 resources and costs on the Parties involved, which is good cause for granting this request, RMG
 28 respectfully requests through this unopposed motion that this Court extend the deadline by which

1 it must serve the Third-Party Complaint or, if it so chooses, an amended Third-Party Complaint
2 on EWA to 14 days from the date this Court issues its order on the Motion. The Parties appearing
3 in this action will not be prejudiced by this extension of time, and in fact, the Parties have
4 stipulated to this extension; Plaintiff has already commenced discovery as to RMG and this Court
5 is scheduled to hear two motions filed by Third-Party Defendants Lenahan and Danna, one jointly
6 and the other only by Lenahan, on March 12, 2013. (Singal Decl., ¶ 13; Dkt. #45.) No trial
7 schedule (or scheduling order) has yet been issued for this case. Accordingly, this requested
8 extension of time, the fifth extension of time in this matter and the third request for an extension
9 of time by RMG (See Singal Decl., ¶ 14), would have no impact on any such schedule.

10 Should this Court choose not to extend the February 7, 2013 deadline currently in place,
11 this complex case will likely be delayed by duplicative motion practice and judicial resources will
12 be further wasted. (Singal Decl., ¶ 12.)

13 III. Conclusion

14 For all these reasons, RMG respectfully requests that this Court grant Defendant and
15 Third-Party Plaintiff RMG's unopposed motion to extend time for serving the Third-Party
16 Complaint or, in its discretion, an amended Third-Party Complaint on Third-Party Defendant
17 EWA to 14 days following the date this Court issues its Order on Third-Party Defendants
18 Lenahan's and Danna's Motion to Dismiss and/or Strike Claims.

Dated: February 6, 2013

DLA PIPER LLP (US)

By: /s/ Vishali Singal
ERIN JANE ILLMAN
VISHALI SINGAL
Attorneys for Defendant and Third-Party
Plaintiff
REACH MEDIA GROUP, LLC

1 PROPOSED ORDER

2 Good cause appearing therefore, Defendant and Third-Party Plaintiff Reach Media Group,
3 LLC's deadline to serve Third-Party Defendant Eagle Web Assets Inc. with the Third-Party
4 Complaint or an amended Third-Party Complaint is extended to 14 days from the date this
5 Court issues its order on the Motion to Strike And/Or Dismiss Third-Party Complaint, filed by
6 Third-Party Defendants Ryan Lenahan and Kyle Danna (Dkt. #38). ~~XXXXXXdeadlinexXXXXXX~~
7 ~~XXXXXXXXXXXXXXXXXXXXXX~~ 2013.

8
9 IT IS SO ORDERED.

10 DATED: February 7, 2013

11 By Paul S. Grewal
12 HONORABLE PAUL SINGH GREWAL
13 UNITED STATES MAGISTRATE JUDGE